

IRA LLC Instructional Guide

Table of Contents

UNDERSTANDING THE IRA LLC.....	1
INVESTING WITH YOUR IRA LLC.....	2
Allowable Investment Assets.....	2
Prohibited Transactions.....	3
Disqualified Persons.....	4
Using Leverage.....	4
Unrelated Debt Financed Income.....	4
Partnerships.....	5
Unrelated Business Taxable Income.....	5
Insurance.....	6
MANAGING THE IRA ACCOUNT.....	6
The Role of the Custodian.....	6
Minimum Balance Requirement.....	7
Annual LLC Valuation.....	7
Adding Capital To The IRA LLC.....	7
Removing Capital From The IRA LLC.....	8
LLC COMPLIANCE.....	8
OPERATING IN MULTIPLE STATES.....	9
LLC TAX FILINGS.....	9
TERMINATING THE LLC.....	10
ESTATE CONCERNS.....	10
ADMINISTRATIVE REQUIREMENTS SUMMARY.....	10

Safeguard Checkbook IRA LLC Instructional Guide

Congratulations on the formation of your Checkbook IRA LLC. This self-directed retirement plan is a powerful tool you can use to grow your retirement through the ability to actively direct the investments of your plan funds in a wide array of traditional and non-traditional assets.

This Instructional Guide is meant to assist you with the key concepts of investing with the plan and maintaining the plan through proper documentation and filings.

You have also been provided with a Memorandum of Law related to the IRA LLC by our provider law firm Draneas & Huglin, PC. Some of the information in this Instructional Guide is a restatement of material in that document – in less technical language. You should be sure to read both documents fully.

Please contact your Safeguard advisor directly if you have questions not covered by these instructions and related to operational and investment matters.

Please be aware that Safeguard IRA & 401(k) Advisors cannot provide tax advisement. You are encouraged to work with your own tax advisor when it comes to matters of tax planning, state or federal tax filings, formulating IRA contribution amounts, and distribution activities.

UNDERSTANDING THE IRA LLC

A Checkbook IRA LLC is a tool designed to provide the IRA account holder with maximum flexibility and control over investment decisions, while conforming with IRS requirements surrounding the tax-sheltered status of the IRA.

A checkbook IRA LLC consists of two layers:

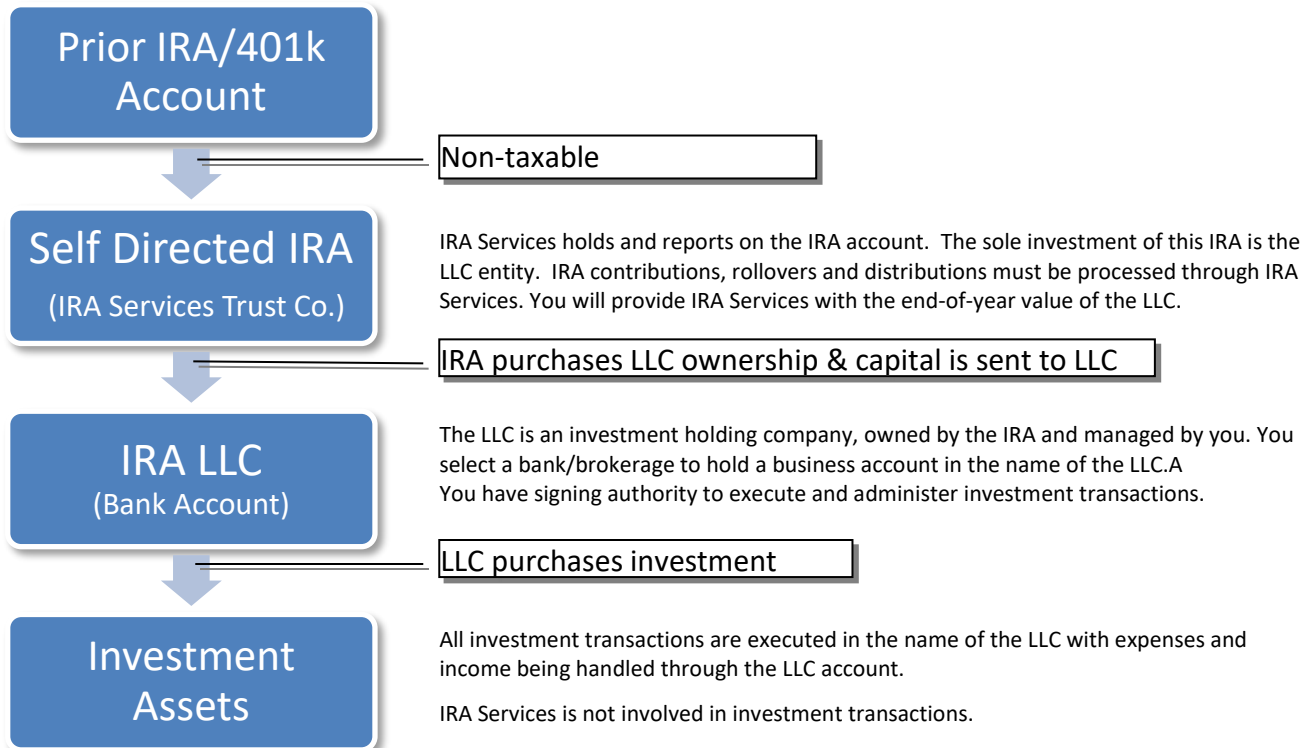
- A self directed IRA account held by IRA Services Trust Co.
- A specially formed LLC that functions as an investment holding company for that IRA account

All IRA events such as contributions, distributions and transfers/rollovers must go through the IRA account at IRA Services Trust Co. This ensures proper compliance reporting.

All investment transactions take place within the LLC entity. Investments are titled in the name of the LLC, and all expenses and income transactions associated with the acquisition, maintenance or sale of an asset are handled through the LLC bank account.

A flow chart on the following page illustrates how the self directed IRA and the LLC fit together.

Safeguard Checkbook IRA LLC Instructional Guide



INVESTING WITH YOUR IRA LLC

Once you have an established and funded LLC bank or brokerage account, you are ready to start investing.

A Few Quick Tips:

When making offers, signing contracts or taking title to assets, you will do so on behalf of the LLC, in your role as Manager, for example:

Best Investment Holdings, LLC, John Q. Public, manager

All plan investment related expenses need to be paid with plan funds

All income received from investments needs to be deposited back into the plan account

Do not transact in any way between the plan and yourself or disqualified parties

Allowable Investment Assets

The LLC may be invested in a diverse range of asset classes, from traditional publicly traded equities, bonds and funds to non-traditional assets such as title to real property, promissory notes and stock of closely held corporations.

Safeguard Checkbook IRA LLC Instructional Guide

The only assets specifically disallowed are life insurance policies and what are referred to as collectibles, including for example:

- Artwork,
- Rugs,
- Antiques,
- Metals - there are exceptions for certain kinds of bullion,
- Gems,
- Stamps,
- Coins - there are exceptions for certain coins of specified purity,
- Alcoholic beverages, and
- Certain other tangible personal property.

There are exceptions to the collectibles exclusion that allow for certain types of coins to be held by the plan.

Note that the IRA LLC may not be a shareholder of a subchapter S Corporation. Such ownership by a non-person is not allowed under the subchapter S rules, and would cause the corporation to be re-characterized as a subchapter C corporation.

Prohibited Transactions

Rules defining the prohibited use of IRA and 401(k) plan funds are defined in IRC 4975(c)(1) and IRS Publications 590 & 560..

Greatly simplified, the key principal is as follows:

All plan activities must be for the exclusive benefit of the plan, and there may be no direct or indirect benefit to the account holder or a disqualified party to the plan.

This section of the code identifies prohibited transactions to include any direct or indirect:

- Selling, exchanging, or leasing, any property between a plan and a disqualified person.
For example, your IRA LLC cannot buy property you currently own from you.
- Lending money or other extension of credit between a plan and a disqualified person.
For example, you cannot personally guarantee a loan for a real estate purchase by your IRA LLC.
- Furnishing goods, services, or facilities between a plan and a disqualified person.
For example, you cannot use personal furniture to furnish your IRA LLC owned rental property. Sweat equity performing repairs or improvements is not allowed.
- Transferring or using by or for the benefit of, a disqualified person the income or assets of a plan.
For example, your IRA LLC cannot buy a vacation property you or your family intends to use, and no, you cannot use it and pay fair market rent.

Safeguard Checkbook IRA LLC Instructional Guide

- Dealing with income or assets of a plan by a disqualified person who is a fiduciary acting in his own interest or for his own account.
For example, you should not loan money to your CPA.
- Receiving any consideration for his or her personal account by a disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.
For example, you cannot pay yourself income from profits generated from your IRA LLC owned rental property.

Disqualified Persons

A disqualified person (IRC 4975(e) (2)) is defined as:

- The IRA owner
- The IRA owner's spouse
- Ancestors (parents, grandparents)
- Lineal Descendents (children, grandchildren)
- Spouses of Lineal Descendents (son-in-law, daughter-in-law)
- Investment advisors
- Fiduciaries – those providing services to the plan
- Any business entity i.e., LLC, Corp, Trust or Partnership in which any of the disqualified persons mentioned above has a 50% or greater interest.

Using Leverage

You may leverage the investments of your IRA LLC with debt instruments such as a mortgage or margin trading account. Any such debt must be non-recourse in nature, meaning there can be no personal guarantee pledged by the account holder or a disqualified party to the account holder. The lender's only security must be the asset related to the debt.

When gains from an investment are obtained through the use of leverage, a tax is applied to the Unrelated Debt Financed Income that results.

Unrelated Debt Financed Income

When a tax-deferred or tax-exempt entity such as a non-profit or IRA receives income from property that has been financed, a tax is applied on the resulting Unrelated Debt-Financed Income (UDFI).

The general principal is that the tax exempt entity's investment is fully sheltered from taxation, but the portion of the income generated through the use of borrowed, non-exempt funds is taxable.

Safeguard Checkbook IRA LLC Instructional Guide

Topics surrounding UDFI are outlined in IRC 514, which defines debt-financed property as “any property which is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year.”

The tax is applied to any profit generated through the use of acquisition indebtedness, such as rental income from real estate or gains on the sale of financed property. UDFI no longer applies once the debt has been paid off for a total of 12 months.

Investors using a self directed IRA would typically encounter this type of taxation when investing in real estate that has been financed with a non-recourse mortgage. The tax would also apply if the IRA owns an interest in a partnership or LLC that obtained financing.

IRS Publication 598 discusses UDFI taxation.

The tax is reported by the IRA using form 990-T, and is a trust tax separate from your personal tax return.

Filing the 990-T return will be your responsibility and we strongly recommend you consult with your tax advisor before entering into a transaction that will incur UDFI.

If you are unsure about a transaction, contact your Safeguard advisor before taking action

Partnerships

The IRA LLC may partner with non-disqualified parties into investments. Examples include:

Taking title to real property as tenants-in-common

Joint ventures

Being a member of a Limited Liability Company (LLC) or Limited Liability Partnership (LLP).

The IRA LLC may also hold an interest in a partnership where disqualified parties hold interest, so long as the combined interest of the plan and disqualified parties does not represent a controlling interest in the entity. Controlling interest can be defined both in terms of equity participation and/or decision-making control. Extreme caution is advised in such cases, and we strongly recommend you consult a tax advisor prior to entering into such arrangements.

Unrelated Business Taxable Income

If the IRA LLC invests into an activity that represents a trade or business, the income generated from that investment may be subject to Unrelated Business Taxable Income (UBTI). The IRS defines a trade or business as any activity regularly carried on for the production of income from selling goods or performing services. Activities are considered regularly carried on if they show frequency and continuity similar to comparable commercial activities of a non-exempt business.

Examples might include:

- An equity position in a LLC operating a restaurant, retail or other type service business

Safeguard Checkbook IRA LLC Instructional Guide

- Repeatedly purchasing real estate with the intention of improving and/or quickly reselling that property (flipping)
- Leasing plan assets other than real property
- Buying and selling personal property

Generally speaking, dividends, holding real property for rental, and lending money are considered passive and would not be subject to UBTI.

IRS Publication 598 discusses UBTI taxation.

The tax is reported by the IRA using form 990-T, and is a trust tax separate from your personal tax return.

Filing the 990-T return will be your responsibility and we strongly recommend you consult with your tax advisor before entering into a transaction that will incur UBTI.

If you are unsure about a transaction, contact your Safeguard advisor before taking action

Insurance

If the plan is investing in real property you will want to obtain appropriate insurance for hazards and potentially landlord or liability coverage.

Keep in mind, the insured entity is the LLC. As a result, you should work with your insurance professional to obtain a policy that provides proper coverage for the LLC. This should be a commercial policy separate and distinct from any personal policy you may hold with an insurer.

MANAGING THE IRA ACCOUNT

Your self-directed IRA is held by IRA Services Trust Co, who serves as custodian and administrator for the account.

Website: www.ira123.com

Customer Service: 800-248-8447

Business Hours: Monday – Friday, 8:00 am – 5:00 pm Pacific time.

The Role of the Custodian

As custodian, IRA Services Trust Co. is responsible for holding and reporting on the IRA account. They are the conduit through which any IRA contributions, rollovers/transfers or distributions must be made and reported. These services are similar to those provided by any IRA account custodian, but with the ability to hold non-traditional assets such as the LLC in the account.

The IRA essentially holds two assets: cash and ownership interest in the LLC.

IRA Services has policies associated with operating your account that you should be familiar with, as it will be your responsibility to manage the IRA and your relationship with IRA Services Trust Co.

Safeguard Checkbook IRA LLC Instructional Guide

Minimum Balance Requirement

A minimum \$300 cash balance is required to be maintained. IRA Services Trust Co. draws future fees on your account from this cash portion. IRA Services Trust Co. will notify you if this cash balance is getting low and needs to be replenished. You may incur additional fees if the cash balance is not sufficient to cover costs on the account.

This cash balance is IRA capital, so it must initially be funded via an IRA contribution, transfer/rollover from another plan, or a liquidation of capital from the IRA's investment in the LLC. You are allowed to reimburse the IRA for fees incurred in the current or prior tax year.

Annual LLC Valuation

In order to produce annual reporting to the IRS on form 5498, IRA Services Trust Co. will require a statement of value for the LLC held by your IRA. They will remind you of this need in December and you can provide the valuation online or using a LLC Valuation form available on the IRA Services Trust Co. website. If you are under age 70 ½, your signature on the valuation is all that is required. If you are over 70 ½ and therefore taking Required Minimum Distributions from the IRA – or otherwise have a taxable event associated with the IRA – the signature of a licensed tax professional will be required as well.

You may contact IRA Services Trust Co. for assistance in managing your account and understanding their operational policies. You may view your account online, and the forms necessary to execute transactions on the account are available on the IRA Services website.

Adding Capital To The IRA LLC

If you wish to add capital to the IRA LLC, this must come from the self directed IRA, as the IRA is the sole member of the LLC. All IRA funds added to the LLC must be routed through IRA Services Trust Co. in order to be properly reported.

UNDER NO CIRCUMSTANCES should you place capital directly into the LLC that has not been routed through IRA Services Trust Co – whether from you personally or from another IRA or retirement plan. To do so breaks the proper chain of reporting and can have severe tax consequences.

You may add cash to the IRA account at IRA Services Trust Co. via an IRA contribution or a transfer/rollover from another qualified retirement plan in your name that is compatible with the type of self directed IRA you have. IRA Services Trust Co. provides the necessary forms and assistance to facilitate these processes.

The IRA capital is added to the LLC via an *Investment Authorization* form available through IRA Services Trust Co. This form instructs IRA Services Trust Co. to purchase additional membership units of the LLC on behalf of your IRA and send the capital to the LLC bank/brokerage account.

The process of adding capital to the LLC can take from 5-20 business days, depending on the source of funds and how responsive another IRA or 401(k) administrator is to a request for transfer.

Safeguard Checkbook IRA LLC Instructional Guide

Some steps in the process may be expedited at an additional cost.

When member capital is added to the LLC, this should be recorded on the LLC record of member contributions/distributions.

Removing Capital From The IRA LLC

At age 59 ½ or later, you are able to take distributions from your IRA without penalty.

In the year during which you turn 70 ½, you will begin taking Required Minimum Distributions (RMD's) from a tax-deferred IRA account. Such RMD's are not required from a Roth IRA.

You may also choose to move IRA capital from the self directed IRA LLC to another retirement plan in your name via a transfer or rollover.

There are several tax and reporting considerations that accompany plan distributions, and we strongly encourage you to work with your CPA on planning for and taking distributions from your IRA.

Taking a distribution is a two step process which must be processed and recorded by IRA Services Trust Co. as custodian for your IRA.

UNDER NO CIRCUMSTANCES should you take capital directly out of the LLC without going through IRA Services Trust Co – whether to you personally or to another IRA or retirement plan. To do so breaks the proper chain of reporting and can have severe tax consequences.

The first step is to send capital from the LLC to the IRA account. This is a liquidation of ownership in the LLC and must be reported using a *Deposit Information* form that is available from IRA Services Trust Co. Funds may be sent by check or wire.

Once the cash is in the IRA account, you may request a distribution to you (which may be taxable), or a transfer to another IRA.

The process of taking a distribution personally will typically take 5-15 business days, depending on whether you use checks or wires to move the funds at each stage.

Some steps in the process may be expedited at an additional cost.

When member capital is distributed from the LLC, this should be recorded on the LLC record of member contributions/distributions.

LLC COMPLIANCE

A LLC is a state registered business entity. The rules and procedures for maintaining the registration of the LLC and the ability to conduct business in a state vary from state-to-state. It is your responsibility to understand and comply with state rules related to the maintenance and administration of your IRA LLC.

We strongly recommend that you work with a locally licensed tax and/or legal professional to assist you in complying with state & local laws associated with the operation of your LLC.

Safeguard Checkbook IRA LLC Instructional Guide

Many states require an “annual report”, which is essentially a confirmation that the LLC is still in business, verification of address, and potentially a registration fee. This annual report may be due at a set time each year or the anniversary date of the initial LLC filing, depending on the state. Failure to file an annual report may result in your LLC being administratively dissolved by the state. The secretary of state business division is generally the authority for this process. Annual reminders are provided by many states, but not all. It is your responsibility to know and fulfill the annual report requirements for your LLC.

Some states have a business franchise or privilege tax that applies to all businesses operating in the state. This may be in place of or in addition to the LLC annual report. Failure to file this tax may result in administrative dissolution of the LLC as well as penalties.

Some states have a state income tax or capital stock tax that applies to businesses operating in the state. Generally speaking your LLC will not be subject to such taxation, as it is a disregarded entity with tax liability flowing to a tax-exempt IRA account. You may be required to submit the state return, however, even if you will not have tax owed.

There may be business license requirements for your LLC at the state, county or municipal level.

Keep in mind, the IRA LLC is a holding company that is a disregarded entity for tax purposes at the federal level, and is wholly owned by a tax-exempt IRA. The IRA LLC is not an operating business. This structure may or may not be wholly recognized by a state or local jurisdiction in the same way.

OPERATING IN MULTIPLE STATES

A LLC is licensed by a specific state, for the purpose of conducting business within that state. If your investment activities will occur outside the state in which your LLC was formed, you may need to register the LLC as a foreign entity to do business in the additional state. Such registration is required to maintain compliance with local state law and to provide your LLC with access to the courts of the state to defend against or pursue a legal action.

Generally speaking, holding income producing property is considered doing business in a state and would require such registration. Pure investment holdings such as shares of a business formed within the second state and some forms of notes may not require such registration.

You would not typically need to register the IRA LLC in a 2nd state before completing a transaction, but you would want to obtain such registration shortly thereafter.

LLC TAX FILINGS

The IRA LLC has been established as a single-member LLC wholly owned by a tax-exempt IRA.

For federal tax purposes, the LLC is viewed as a disregarded entity. As such, the tax and reporting liability for the LLC flow through to the sole owner – the IRA account. The annual 5498 filing prepared by IRA Services Trust Co. on behalf of your IRA is generally all that is required. No federal tax return will be required for the LLC.

Safeguard Checkbook IRA LLC Instructional Guide

Generally, most states are tied in with the federal filing requirements. However, you should contact a tax professional in your own state to determine the correct filing requirements for your particular state.

If the IRA has unrelated business income or debt financed income, the IRA will have additional filings associated with these activities. A Federal form 990-T will be required. The LLC state may also have a tax return requirement in these scenarios.

TERMINATING THE LLC

The LLC may be terminated by the process of distributing the assets to the member (the IRA) and filing for dissolution with the state.

This process may be complex, depending on the nature of assets held within the LLC and the state of LLC formation.

You should consult with your tax and/or legal advisor prior to terminating the LLC.

ESTATE CONCERNS

As part of the plan setup, you will have established beneficiaries for your IRA account. In the event of your death, your account beneficiaries will inherit the IRA as well as the LLC that is owned by the IRA.

As manager of the LLC, you should also plan for the administration and wind-down of the LLC in the event of your death.

If you are married, you may have appointed your spouse as a co-manager of the LLC. This would give them the administrative control necessary to handle the LLC at your death.

You may want to make arrangements for a successor manager as an alternative to, or in addition to having a co-manager. A successor manager could be appointed at the time of your death or incapacitation and takeover administration of the LLC. A blank resolution template is included in the *Forms* section of your documents, and could be used to designate a successor manager for the LLC.

Keep in mind, there may be state specific rules regarding the appointment of a successor manager, notary requirements, and the designated person's acceptance of the role. We strongly advise you to consult with a state licensed attorney familiar with LLC corporate law before appointing a successor manager.

You should be sure that whoever will be handling your affairs is aware of the existence of the IRA LLC and knows where the plan documents are held.

ADMINISTRATIVE REQUIREMENTS SUMMARY

In your role as manager of the LLC, it is your responsibility to document plan activities and fulfill certain reporting obligations.

Generally speaking, you will need to:

Safeguard Checkbook IRA LLC Instructional Guide

Keep records of LLC investment activities such as bank statements, title to assets and receipts for expenses and income.

Provide IRA Services Trust Co. with an annual statement of fair market value for the LLC.

Comply with state specific rules related to the LLC Annual Report and potentially state tax or business license requirements.

Document changes in the LLC member contribution that may result from adding or removing capital from the LLC such as IRA contributions/rollovers or IRA distributions.

Manage tax records such as forms W-9 and 1099-Misc for any contractors providing services to the plan as required by law.

File form 990-T if the IRA LLC is subject to UDFI or UBTI taxation

Several of the above items have been covered in greater detail elsewhere.

Forms for managing and documenting plan activities are contained in the **Forms** section.

If you require services such as those of a tax advisor, bookkeeper, or attorney to assist in the administration of the IRA LLC, reasonable fees may be paid from plan funds for such services.